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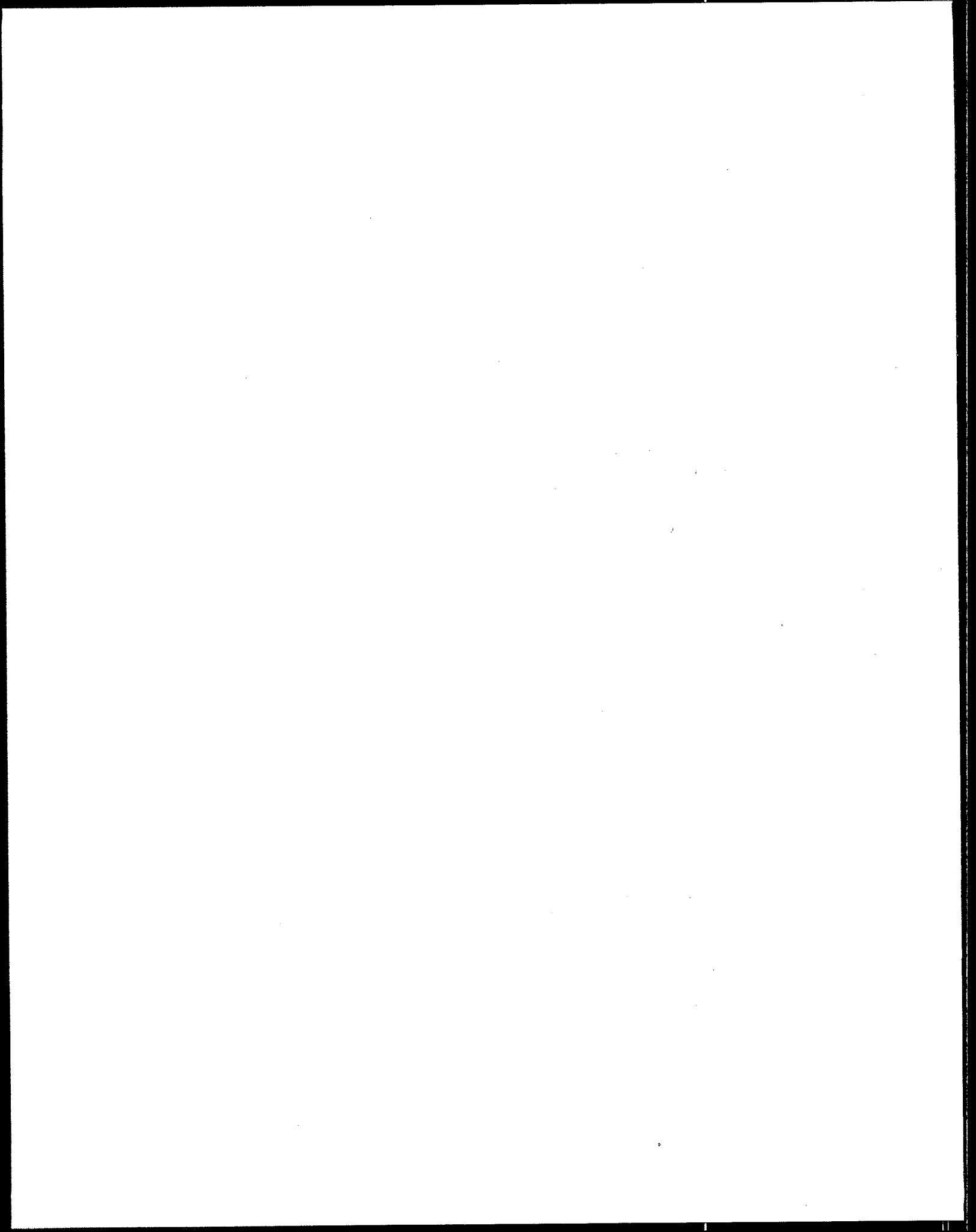
Acknowledgement

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SUMMARY

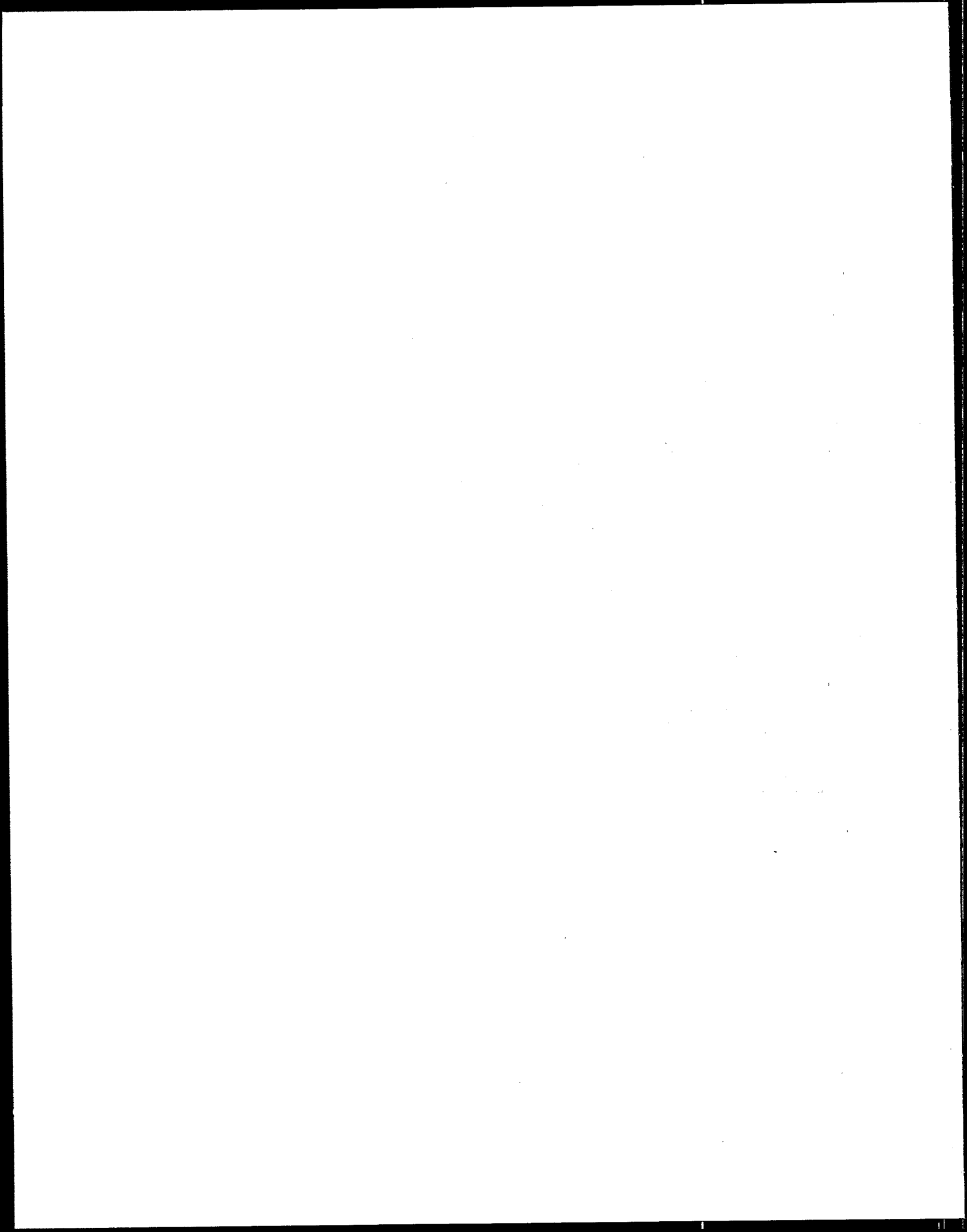
The threat of liability for government service in the context of Title III has been a subject about which there has been considerable interest. This report represents a review of the available information about tort liability in the Title III context and provides some guidance about how particular states fit within the general tort liability area.

Governmental officials and employees, business representatives, and other individuals who are members of a Local Emergency Planning Committee serve in an environment where the threat of liability suits is ever-present; however, the threat of liability judgments against the individuals involved is relatively remote.

Although the threat of personal and organizational liability exists, several levels of legal determinations must be considered before liability is attached to a particular situation. First, the question of whether negligence by or on behalf of the state exists. If this question is answered in the affirmative, then there is the question of whether state law provides qualified immunity to protect the interests of the state and those who serve it. Often this discretionary, proprietary, private duty or statutory immunity provides extensive protection for official agents of the state who perform their duties within the prescribed limits of their role and responsibility. It must be noted however, that the immunity is only qualified, and may be lost if the member's actions are willful or wanton.

Additionally, the fear of suits and the exposure of the member's personal resources is often addressed by statutory indemnification provisions. These statutes provide for legal representation and the provision of payments for any judgements that are rendered. Indemnification statutes are attempts to encourage public servants, paid and non-paid, to carry out their official obligations without fear of personal financial loss.

Because a particular state's law is generally the determining factor on many questions of liability, members of Local Emergency Planning Committees should consult legal counsel in their state to discuss their duties, authority, status as an agent of the state, immunities, and indemnification. Legal counsel can clarify the scope of individual and organizational liability so that local committees and their members can focus their attention on planning for hazardous materials emergencies.



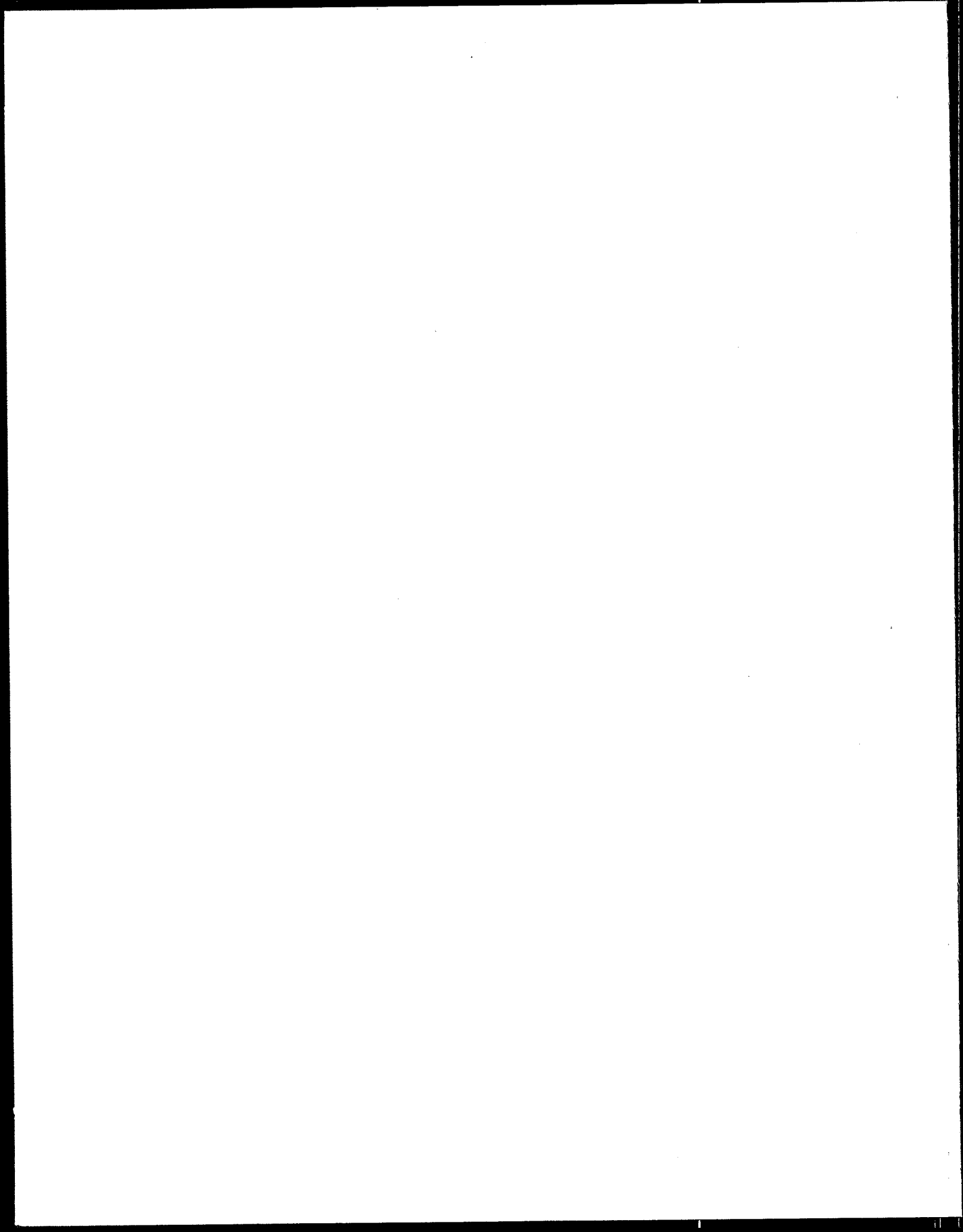
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TORT LIABILITY IN EMERGENCY PLANNING

I. INTRODUCTION

As the result of several well-publicized and disastrous incidents affecting individual health and the environment, accidents involving hazardous materials became real to individuals in the United States and around the world beginning in this decade.

Accidental spills or releases of hazardous materials have the potential for inflicting health and environmental damage and causing significant disruption in communities of all sizes. In recognition of this fact, in 1986 Congress enacted amendments to Superfund legislation (SARA Title III) which placed federal emergency planning requirements and community right-to-know provisions on state and local government.

Title III of SARA requires the Governor of each State to appoint a State Emergency Response Commission. Each state commission then designates Local Emergency Planning Committees, appoints committee members and supervises and coordinates the activities of the committees. The local committees are required to develop an emergency response plan for their community and to identify available resources which can be called on to respond to emergencies involving hazardous materials. The local committees also create a means of maintaining information on hazardous materials which are present in the community, and which Title III now requires be reported to them.

Many members of Local Emergency Planning Committees are concerned about the liability that may arise from their planning and administrative duties. The scope of liability is determined by both federal and state law.

II. LIABILITY UNDER FEDERAL LAW

Under the provisions of SARA Title III, Local Emergency Planning Committees are required to prepare a plan for responding to chemical spills and other releases of hazardous materials into the environment.

Once the plan is developed, it must be reviewed at least once a year -- or more frequently, if circumstances warrant. Local committees must conduct exercises to implement the plan. They are required also to make recommendations concerning additional resources that may be necessary and the means for providing those resources to make the plan effective.

The law also requires that local committees make certain information available to the public. This would include, for example, the local emergency response plan, as well as forms indicating which hazardous materials are present in the community.

Under the law, the federal courts may fine individuals or businesses which fail to report toxic and hazardous chemicals. Fines can also be assessed for failure to submit required reports such as materials safety data sheets or to provide required

to report toxic and hazardous chemicals. Fines can also be assessed for failure to submit required reports such as materials safety data sheets or to provide required information to health professionals.

A person who has been denied access to information required by law, or who feels that the committee is not meeting the requirements of the law, may file suit in a federal district court against the governor or the State Emergency Response Commission. The court may order the governor or the commission to meet the requirements of the law, but the law does not provide for financial penalties against either entity (except in claims involving trade secrets).

SARA Title III does not provide authority for anyone to sue a local committee or a local committee member. However, this federal law does not prevent a person from filing suit under any other applicable federal, state or local law. Persons who feel that they have been harmed by a local committee, or by an individual member of that committee, may file suit in a state court under state law. Whether a Local Emergency Planning Committee, or one of its members, can be held liable is a question of state law.

III. LIABILITY UNDER STATE LAW

Major changes have occurred at the state level during the last twenty years with regard to the immunity of governmental jurisdictions from tort liability suits filed by individuals, businesses, or interest groups. Today, in many states, individuals and businesses may file suit against a public organization as well as the officers and employees of that organization.

Tort Liability

A tort is an action that harms another person, business, or group. It occurs when a person acts or fails to act, without right, and thus harms another directly or indirectly. A tort is an act for which a civil action for personal injuries or property damage, rather than a criminal suit.

Each state, through its laws, regulations, and court decisions, recognizes certain rights of individuals and businesses. A state's tort law protects these rights by providing a means for a person or business to seek compensation for losses or harm caused by another. Tort law suggests that, under the principle of fairness, individuals harmed should be compensated to some degree for their loss. Tort law, less and less makes differentiation between harm by public and harm by private entities.

The guidelines for filing a tort liability claim against a state or local governmental jurisdiction, or against individual employees or representatives of that jurisdiction, are established by the tort law of each state. This law determines how suits will be reviewed and defines the extent of the liability of governmental officers and organizations.

The Erosion of Governmental Immunity

For many years, most states and their political subdivisions enjoyed wide protection or immunity from civil suits filed by individuals seeking relief because of the wrongful conduct of public officials and employees.

This immunity was based on an English common law principle called **Sovereign Immunity**. Under English law, the sovereign (king or queen) traditionally could do no wrong. The sovereign and his or her representatives were thus immune from civil claims. This doctrine was adopted into American law, thereby extending immunity to the states and their political subdivisions.

Until 1960, only five states allowed suits against a state or its political subdivisions. Beginning in the Sixties, however, state court decisions and legislative actions began to erode the protections of sovereign immunity. By the mid-1980s, every state in the Union had either laws or court decisions defining the extent of liability of governmental units and their officers, employees, or official representatives. These statutes and court decisions define:

- The scope of liability
- Areas of immunity
- Procedural requirements for making claims
- Damage limitations
- Indemnification provisions
- Means of providing insurance

In summary, then, the tort liability of state commissions, committees, or individual members is affected and shaped by:

- Governmental Liability and Immunity. The law in each state defines the extent of governmental liability and indicates whether immunity is recognized in special circumstances. The immunity may involve discretionary actions, governmental functions, or statutory provisions.
- State Action. Tort claims against a commission, committee, or its individual members are filed in state court. The state is generally named in the suit since commissions, committees, or individual members while serving in their official capacity act on behalf of and represent the state.
- Special Issues. If an action is filed against a member of a commission or committee, some states provide legal counsel or pay a judgment (indemnification). States may also be liable for the actions of the commission or committees (vicarious liability). Immunity provisions may apply, but could be lost for willful or intentional actions.

IV. GOVERNMENTAL LIABILITY AND IMMUNITY

The law of torts may allow suits against governmental jurisdictions with few restrictions or limitations, as in the case of Washington or Louisiana. Other

states place extensive restrictions on suits against public agencies of the state or its political subdivisions, as is the case in Mississippi. The liability of governmental jurisdictions and their employees may be shaped by:

1. Negligence
2. Statutory Immunity
3. Discretionary Immunity
4. Governmental/Proprietary Function Test
5. Private Liability Test

These elements of the law define the extent to which governmental units and their employees or agents are immune from suit and indicate where they are liable. At the state level, the extent of immunity or liability is determined by state statutes and by decisions of the state courts. In order to understand the liability of Local Emergency Planning Committees and their members, one must know the law of the state and which principles of the law affect the scope of liability and immunity within that state.

Negligence

State tort law generally provides a means for individuals harmed by the actions of a governmental unit or its employees to claim compensation for their loss. Such a suit could claim, for example, that the governmental unit or its employee(s) failed to do what the reasonable and prudent person would have done under the circumstances. This, of course, is negligence. Negligence is an unintentional action which causes harm to another. It occurs when a person owes a duty to another and fails to act with skill, diligence, or care, thus causing harm to that person. The theory of negligence applies without regard to whether the cause of the harm is in the public or private sector. There are four elements of negligence:

- (1) The existence of a duty or standard of conduct created by judicial decision (common law) or by a provision in state law;
- (2) The failure to carry out the standard of conduct or duty;
- (3) A connection between the act of the wrongdoers (the governmental agency, employee, or agent) and the injury to another party (individual, business, or corporation), which the law recognizes as the legal cause of the harm; and
- (4) Actual loss or harm to the injured party(ies).

All suits involving negligence must have these four elements. The failure to satisfy each of these elements would result in dismissal of a claim of liability.

The first element of negligence is the existence of a duty which establishes a standard of conduct for a public agency or a representative of that agency. This duty may be imposed by common law, which requires that a person or organization use reasonable judgment to determine whether conduct causes a risk of harm to others. In other words, a person or organization must use reasonable attention, perception, memory, knowledge, intelligence, and judgment in everyday actions.

A school administration, for example, has a common law duty to repair playground equipment that is unsafe. Public works departments have a duty to repair known road hazards within a reasonable time. Liability for failure to repair a hazard is determined by whether the department was informed that a danger exists and that such a danger created a significant threat to others.

The common law duty to protect others is based on:

- (1) A significant threat or known hazard which presents a danger to others; and
- (2) Control of the property (the playground or roadway) by a public agency.

In addition to duties imposed by common law, duties may also be imposed on public organizations by state law. A statutory duty would include, for example, a requirement to inspect day care centers, repair traffic controls, correct safety hazards in the work place, or inspect public buildings.

These statutory duties may or may not specifically mention liability. They may simply establish a duty of care. Where liability is not specified, a court is generally free to adopt or reject the statutory duty in a claim. Where a statute provides for liability and penalties, the court will adopt the statute's standard of care and penalties. Liability may in these circumstances simply be determined by demonstrating that the statute was not carried out.

State law may require a State Emergency Response Commission or a Local Emergency Planning Committee to develop a current emergency preparedness or hazardous materials response plan. The failure to develop this plan and keep it current could be the basis for a suit against the state commission or local committee by individuals who believe that they were harmed by the failure of the commission or committee to carry out the law, i.e., that the committee was negligent in fulfilling its responsibilities.

Public officials, commissions, and committees often have broad discretion to make decisions involving public programs. Where such discretion is limited by statute, agency rules, or regulations, liability may exist. The limits of a committee's authority and discretion are thus a critical factor in determining the extent of immunity.

A finding of negligence depends on several factors. These include: the facts in the case, the circumstances surrounding the incident, the conduct of the alleged wrongdoer, and whether the actions of the wrongdoer were, in

fact, the cause of the injury or harm. Differences in facts among cases, even though slight, may lead to different findings regarding liability, thus few generalizations are easily made.

Public officials who act in a reasonable manner and carry out the duties imposed by law are usually protected from liability. However, even when public officials fail to act in a reasonable manner or fail to carry out the requirements of a law, and that failure causes harm to others, they may still have protection under the law. This protection is called **immunity**.

Statutory Immunity

State law may specifically provide immunity from liability for certain actions. These may include emergency management activities, or actions involved in helping respond to, prevent, or manage an incident involving hazardous materials.

This immunity provision may be narrowly drawn to provide protection only during a response, or it may be broadly defined to provide immunity in any emergency management or disaster activity. A committee member may have immunity under the law even if that person is negligent and has caused harm to others.

Two elements affect immunity of hazardous materials programs and activities under state law (including the activities of a state commission and a local committee):

- (1) The state disaster or emergency management statute may address the effects of natural, man-made, or attack disasters and provide immunity for emergency programs and activities. In this case, if a suit is brought, the court would evaluate whether activities of the local committee are a part of the state's emergency management program. If the statute specifically includes man-made or technological causes in the definition of a disaster, then the activities of the state commission and local committee may be immune from suit and protected by immunity provisions in the state emergency management statute.

A provision in the state emergency management statute may provide immunity to a person while engaged in **any emergency management activity**, or may limit immunity during a response to a declared emergency.

A state that has an immunity provision for any emergency management activity may choose to define **emergency management**. The term may be defined as any activity involved in planning, preparing for, and carrying out functions to prevent, minimize, or repair injury resulting from emergencies or disasters.

Such a broad definition includes activities involved in planning, organizing, administering, and evaluating disaster programs and activities.

In case of a suit, the courts could determine that the activities of a local committee fall within the planning and administrative provisions of the act and are thus immune from suit.

- (2) A state may also provide specific statutory immunity for actions involved in preventing, managing, or responding to emergencies involving hazardous materials. Since state commissions, local committees, employees, and authorized agents would be involved in preventing or responding to such an emergency, a law of this kind could provide immunity from suits.

Discretionary Immunity

In addition to immunity that may be provided under a state statute, high level public officials enjoy protection for their discretionary judgments and for decisions made within the scope of their position. This protection has been provided by judicial decisions involving suits against public officials and in legislative actions to protect public officials. It is available in almost all states.

The intent of **discretionary immunity** is to free the public official from the fear of tort liability if the decision results in harm to another. Discretionary actions include policy-making decisions which chart the direction and extent of policies, programs, and activities. They do not include decisions concerning implementation of such policies, programs, or activities.

Discretionary immunity evolved from a concern on the part of courts and legislatures not to interfere with the executive decision-making process. This form of immunity is intended to address the claims of individuals harmed by the actions of public officials and employees, and not discourage well-qualified persons from serving in public positions.

The following questions clarify whether a decision is a discretionary action:

- Does the decision involve a basic governmental policy or program?
- Does the decision chart the **course or direction** of a program, activity, policy, or objective (as opposed to a decision which involves **accomplishing** the policy)?
- Does the decision require the exercise of basic policy judgment or expertise on the part of the government employee?
- Does the governmental agency possess the proper authority to make the challenged act or decision?

If the decision of the governmental agency or official involves these elements, then the decision is discretionary and is protected by immunity. If one or more of the questions are answered in the negative, further inquiry is necessary and liability may result.

Discretionary immunity is not intended to exempt officers from liability. It simply provides them some measure of protection while exercising their judgment. It exists only when the agency or official has been delegated responsibility or authority for certain decisions or judgments.

It is essential, therefore, that members of a committee understand the scope of their duties and the limitations of their authority. Where members of a local committee make decisions which are within their authority, they may be exercising a discretionary action and may thus be immune from civil suit in state court.

Governmental/Proprietary Function Test

The law in fifteen states makes a distinction between governmental activities that are traditionally performed by public agencies and those activities that are proprietary or conducted by the private sector. For those states, a governmental or proprietary function test applies.

Activities such as licensing, permitting, inspections, and public safety are performed by the public sector as an essential service for the public good. Therefore, immunity is granted in these areas. The protection exists even though the employee or agent may be negligent and cause harm to another.

Proprietary activities are performed by the public sector, but are similar to business ventures in the private sector. They might include, for example, services such as transit systems, parking garages, city hospitals, recreation services, and garbage collection. If an injury results from these services because of negligence, the courts could hold the public sector liable.

States that recognize the governmental proprietary function test usually consider public safety, law enforcement or fire-fighting activities as governmental functions. These agencies operate with immunity.

Disaster and emergency preparedness units are generally designated as public safety operations, and therefore governmental functions which are immune from suit.

Care should be taken to identify those activities in a state which qualify as "governmental functions." Though variations occur, the law in each of the fifteen states defines which activities are governmental functions, and thus which activities have this immunity.

Private Liability Test

In Florida, the State Supreme Court adapted the governmental proprietary function test to create a form of immunity for public agencies in Florida referred to as the Private Liability Test. State law in Florida provides that public agencies are liable "to the same extent as a private person under like circumstances." In other words, if a duty does not exist for a private person under the same circumstances, then there would be no duty for the public employee or agent, and thus no liability. In order to clarify this private liability test, the court established four types of activities:

- (1) Legislative, permitting, licensing, and executive officer activities
- (2) Enforcement of the laws and protection of public safety
- (3) Capital improvements and property control operations
- (4) Provision of professional, educational, and health care services

The Florida Supreme Court held that there would be no liability for the action or inaction of governmental officials or employees in carrying out the activities of categories 1 and 2. Private individuals and businesses do not have a duty in licensing or permitting or with regard to protecting the health and safety of the community. Since private individuals or businesses do not have any legal duty in these areas, there is no legal duty placed upon public entities or individuals.

Professional, educational, and general services and activities such as the provision of medical care and educational services are performed by private persons as well as governmental entities. A standard of care governing actions in these areas is recognized in the private sector. Since a common law duty of care exists in the private sector, a public agency could be held to the same standard. There could be liability for activities which fit in categories 3 and 4.

V. STATE ACTION

In their laws or comprehensive tort liability statutes, many states include provisions that a governmental jurisdiction is responsible for the actions of its officers, employees, and agents. The official actions of the officials, employees, or agents performed within the scope of their duties and responsibilities are thus done on behalf of the agency of the state (state action). Where this principle of state action applies, individuals are generally protected from liability.

A suit filed against an individual member of a State Emergency Response Commission or a Local Emergency Planning Committee for actions while serving the public agency would be a claim in the person's "official capacity" rather than individual or personal capacity. As long as the claim involves actions relating to the member's official duties, the suit will be filed

against him in his official capacity as a representative of the agency (the state).

However, if the alleged violation evolves from actions outside the duties of commission or committee members, the court may consider the claim against the member to be in his individual capacity and therefore the individual may be subject to liability.

A "state agency" may include all executive departments, agencies, boards, bureaus, and commissions of the state, the primary function of which is to act as instrumentalities or agencies of the state.

The term "employee" may be defined to include full- and part- time paid staff, volunteers, official agents, and appointed members of boards and commissions.

For example, in Alabama, an "employee" is an officer, official, employee, or servant of a governmental entity, including elected or appointed officials, and persons acting on behalf of any governmental entity in any official capacity in the service of the governmental entity.

In Arizona, an "employee" includes an officer, employee, or servant, whether or not compensated or part-time, who is authorized to perform any act of service (except independent contractors). "Employee" also includes uncompensated members of advisory boards appointed as provided by law.

A state commission, district, or committee formally created by the executive order of the governor or by state legislative action is thus an official agency of the state. A Local Emergency Planning Committee that is created by a State Emergency Response Commission and whose members are appointed by the state commission is also an agency of the state. If the members of the local committee are appointed by the state commission, then they represent the state rather than a city, county, or other political subdivision.

If the state commission authorizes or requires political subdivisions to appoint members of the local committee, the court could conclude that the local committee represents the political subdivision rather than the state. In this case, the law which would apply would be the law which applied to the political subdivision which made the appointment. Commission and committee members may qualify as "employees" as long as they are formally appointed under the laws of the state by a proper authority. The term "employee" may even apply to special advisors of the commissions and committees who work with or without compensation as long as they are formally authorized by the commission and do not serve as a private contractor.

Commission and committee members should review the meaning of the "state" and "employee" in their state to determine whether they are considered official agents of the state.

Many Local Emergency Planning Committee members serve in a dual capacity as a member of the committee and as an employee of the political subdivision (city fire service, police department, or emergency management agency). As long as state law defines "employee" to include members of commissions, boards, or committees, the member's actions would be as an official agent of the state.

Depending upon the circumstances, however, the court could conclude that the actions of the committee member were outside his role and authority as a committee member, but were within his capacity as a local governmental employee. Actions outside their committee role could be viewed by the courts as acts of the local governmental employer. This distinction could result in a determination that the local government, for example, was liable for the act of the employee rather than the state which appointed the individual to the committee. Committee members should therefore understand their authorized role and responsibilities.

Many local committee members are self-employed, employed by or represent a private business or non-profit corporation, or are a private citizen who is not employed. The actions of these local committee members would be considered state actions on behalf of the state as long as:

- (1) the local committee members are appointed by the state commission;
- (2) the state commission has the necessary state authority to appoint local committee members;
- (3) both the state commission and the local committee are agencies of the state;
- (4) state law recognizes the local committee members as agents of the state; and
- (5) the committee member is acting within the scope of his authority.

Under these circumstances, the state courts would ordinarily perceive suits against local committee members as suits in their official capacity or suits against the state and such suits would not subject the individual to personal liability.

VI. SPECIAL ISSUES

Although state, agencies, and their official agents may enjoy broad immunity under state law, the threat of liability suits against a state commission, committee, or individual members does exist. State law may allow civil suits in state court against a public agency or its representative. As a protection for employees and official agents who are sued, the state may provide legal counsel and also pay damages.

In many states, the employer or agency is, by law, vicariously liable for actions of its employees or agents. Under these circumstances, the agency provides legal counsel for the public official or agent and pays any judgment assessed by the court. The law usually specifies that the employee or agent must have been acting within his or her authorized role and did not intentionally cause harm to others.

Statutes granting indemnification or immunity from liability are intended to insulate officers and employees from civil claims arising out of their official duties. The agency is obligated to represent and pay damages for legitimate activities performed within the member's position. It is intended to extend protection for negligent acts, but not from gross negligence or intentional actions.

Despite the availability of statutory or judicial immunities, employees or official representatives of public jurisdictions may be held liable for conduct that is reckless, unjustifiable, or intentional, and that goes well beyond what the reasonable and prudent person would have done under the circumstances. Clearly, public employees and volunteers must understand that there are limits to immunity and indemnification.

Indemnification also means that the agency will not seek restitution from the official or agent for the cost of the suit. Indemnification allows an agency to represent employees and officials, pay judgments, and be prohibited from seeking restitution from the individual. The agency is not, however, prohibited from taking disciplinary action against an employee whose actions justify punishment.

VII. CONCLUSIONS

While governmental officials and employees, business representatives, and individuals who are members of a local planning committee may serve in an environment where the threat of liability suits is ever-present, it should be remembered that the threat of liability judgments against the individuals involved is relatively remote.

Although the threat of personal and organizational liability exists, state law provides qualified immunity to protect the interests of the state. Discretionary, proprietary, private duty or statutory immunity provides extensive protection for official agents of the state who perform their duties within the prescribed limits of their role and responsibility. The immunity, however, is only qualified, and could be lost if the member's actions are willful or wanton.

Finally, the fear of suits and the exposure of the member's personal resources is often addressed by statutory indemnification provisions. These provisions attempt to encourage public servants, paid and non-paid, to carry out their official obligations without fear of personal financial loss.

Members of Local Emergency Planning Committees should consult legal counsel in their state to discuss their duties, authority, status as an agent of the state, immunities, and indemnification. Legal counsel can clarify the scope of individual and organizational liability so that local committees and their members can focus their attention on planning for hazardous materials emergencies.

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APPENDIX A

GUIDE FOR DETERMINING LIABILITY

To clarify the scope of liability under state law, members of local emergency planning committees should focus on the following points:

A. IS SOVEREIGN IMMUNITY ABOLISHED, RETAINED OR PARTIALLY WAIVED UNDER STATE LAW?

If sovereign immunity is retained, abolished or partially waived, state statutes and court decisions will clarify what immunity exists in specific programs or actions. Appendix "B" provides an initial guide in determining the status of sovereign immunity in each state.

Does the state have a comprehensive tort liability statute or a few provisions of the state code that describe the liability of governmental units?

Appendix "B" identifies those states that have a comprehensive tort liability statute and those that have selected statutes addressing liability. Since in most cases, the State Emergency Response Commission and through them, the Local Emergency Planning Committees are appointed by the state (Governor), state tort law will determine the extent of liability for the Local Emergency Planning Committee and its members.

B. DOES STATE LAW RECOGNIZE DISCRETIONARY IMMUNITY?

Almost all states recognize immunity for public officials exercising discretionary judgments. New Mexico is the only state that does not recognize discretionary immunity by law.

C. DOES THE STATE RECOGNIZE THE DISTINCTION BETWEEN GOVERNMENTAL AND PROPRIETARY ACTIVITIES, AND OFFER IMMUNITY FOR GOVERNMENTAL FUNCTIONS?

States that recognize immunity for governmental functions may specifically include state emergency management programs and activities as governmental functions. Appendix "B" identifies those states that recognize this form of immunity. Review the introduction to the emergency management statute in your state to see if emergency management is designated as a governmental function.

D. IMMUNITY IN EMERGENCY MANAGEMENT ACTIVITIES

1. What is a disaster?

Many state emergency management acts provide immunity for state and local jurisdictions involved in emergency management activities. The immunity provisions apply to hazardous materials emergencies if the term "disaster" is defined in the statute to include technological, man-made or human-caused events.

Most state emergency management statutes define the term "disaster" in the introduction to the statute. Review the introductory section of your state emergency management act to see if disaster includes technological or man-made incidents. Appendix "B" notes those states that define "disaster" to include technological, man-made or human-caused events.

2. Immunity Provision

Does the state emergency management act have an immunity provision? If so, is immunity limited to designated disasters or does it apply in any emergency management activity? If your state provides for immunity in any emergency activity, you may be protected in planning or administrative activities, practice exercises, drills or training activities. Appendix "B" notes those states that have an immunity provision for any emergency management activity. To clarify what activities are included in emergency management, refer to the definitions section of the state emergency management statute for a complete statement of what is meant by "emergency management."

3. Local Planning Requirements

Twenty-five state emergency management acts include provisions requiring local governments to develop and maintain local emergency management plans. A jurisdiction may lose immunity provided in emergencies if they cause harm because a local plan was not developed or maintained. A citizen harmed as a result of a failure to meet a statutory duty to develop and keep current a local emergency management plan, could be the basis of a liability suit. Appendix "B" notes those states that require a local disaster plan.

Appendix B

TORT LIABILITY IN EMERGENCY PLANNING
Summary of State Law

STATE	SOVEREIGN IMMUNITY	GOVERNMENTAL IMMUNITY	STATE EMERGENCY MANAGEMENT ACT				
			"DISASTER" (includes man-made events)	IMMUNITY IN EMERGENCY	BROAD DEFINITION OF EMERGENCY MANAGEMENT	LOCAL PLAN REQUIRED	OTHER
Alabama	PW (1) [state r]		x	31-9-16	x	x	4
Alaska	A (2)			26.20.140	x	x	
Arizona	A (2)		x	26-314	x		
Arkansas	R		x	12-75-128	x	x	4
California	PW (2)		x	8657	x	x	
Colorado	PW (2)	x	x	24-33.5-903	x	x	5
Connecticut	PW (1)	x		Sect. 28-13	x		4
Delaware	PW (2)		x	Sect. 3116	x		3
Florida	PW (2)		x	(Broad immunity recognized in case law)	x		3
Georgia	PW (1)	x	x	38-3-35	x	x	4
Hawaii	PW		x	128-18	x		4
Idaho	PW (2)		x	46-1017		x	
Illinois	PW (2)		x	1117	x	x	3,4
Indiana	PW (2)		x	10-4-1-8	x	x	
Iowa	PW (2)		x			x	3,4
Kansas	PW (2)		x	48-915	x	x	
Kentucky	PW (1)	x	x	39.433	x	x	4
Louisiana	A		x	29.613	x	x	
Maine	PW (2)		x	37-B 822	x	x	3
Maryland	PW (1)	x	x	12-105			
Massachusetts	PW (2)			31Sect. 12A	Limited		

STATE EMERGENCY MANAGEMENT ACT

STATE	SOVEREIGN IMMUNITY	GOVERNMENTAL IMMUNITY	"DISASTER" (includes man-made events)	IMMUNITY IN EMERGENCY	BROAD DEFINITION OF EMERGENCY MANAGEMENT	LOCAL PLAN REQUIRED	OTHER
Michigan	PW (2)	x	x	30.411	x		
Minnesota	PW (2)		x	466.07 [local] 3.736 [state]			3
Mississippi	PW (2)		x	33-15-21	x		3
Missouri	PW (1)	x	x				3
Montana	PW (2)		x	10-3-111	x	x	3
Nebraska	PW (2)		x	81-829.55	x	x	3,4
Nevada	A (2)			414.110	x		3
New Hampshire	PW (1)		x	107:12	x		3
New Jersey	PW (2)			55:13A-6 Hazardous Mat. Response			3
New Mexico	PW (2)		x	41-4-4			
New York	PW (2)		x	9193	x		
North Carolina	PW (1)	x [local]	x	166 A-14	x		3,4
North Dakota	PW (1)		x	37-17.1-16	x	x	3
Ohio	PW (1)	x	x	5915.10	x		4
Oklahoma	PW (2)		x	63 S. 683.14	x		
Oregon	PW (2)		x	401.170	x		
Pennsylvania	PW (2)		x	7303(c)	x	x	
Rhode Island	A (2)	x	x	30-15-15	x		
South Carolina	PW (2)		x	15-78-60 (19)	x		
South Dakota	PW (1)	x	x	33-15-38	x	x	3
Tennessee	PW (2)		x	58-2-129	x		
Texas	PW (2)	x	x	418.022	x	x	

STATE EMERGENCY MANAGEMENT ACT							
STATE	SOVEREIGN IMMUNITY	GOVERNMENTAL IMMUNITY	"DISASTER" (includes man-made events)	IMMUNITY IN EMERGENCY	BROAD DEFINITION OF EMERGENCY MANAGEMENT	LOCAL PLAN REQUIRED	OTHER
Utah	PW (2)	x	x	63-30-16	x		
Vermont	PW (1)	x		20 Sect. 7	x		3
Virginia	PW (1)	x	x	44-146.23	x	x	
Washington	A (2)		x	38.52.180	x	x	5
West Virginia	A (2)		x	15-5-11(a)	x		4
Wisconsin	A (1) [local] R [state]		x	166.08(e) 895.48(e)		x	
Wyoming	A (2)			19-5-113	x	x	3

KEY

A Abolished Sovereign Immunity

PW Partial Waiver of Immunity

R Retained Immunity

1 Selected Statutes: State statutes permit suits in specific areas.

2 Comprehensive Tort Liability Statute: These statutes define the scope of the liability of public agencies; establishes what forms of immunity exist; discusses procedures for bringing suit; and sets limits for damages, if any.

3 Purchase of insurance constitutes waiver of immunity.

4 State Claims Board, Commission or Appeals Court reviews liability claims rather than a state court.

5 State assumes financial liability for claims in an emergency situation.

Broad Definition of Emergency Management: The State Emergency Management Act may provide immunity in any emergency management activity (planning, organizing, administering, responding and cleanup activities).

